

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

FILED

STATE OF LOUISIANA

2011 JUL 20 P 12:53

NO. 2005-11709
c/w 06-10210

DIVISION "B"

CIVIL
DISTRICT COURT

ELMIRA PRESTON, HOWARD PRESTON, ROSE LEFRANCE PRESTON, SHERYL
PRESTON, DEBORAH MAZIE, ANTHONY PRESTON, LEONARD PRESTON, DARLENE
PRESTON, CYNTHIA PRESTON, ANGELA NELSON, WANDA PRESTON, BRYAN
PRESTON AND TYRONE PRESTON, INDIVIDUALLY AND ON BEHALF OF LEAON
PRESTON, DECEASED

VERSUS

TENET HEALTHSYSTEMS MEMORIAL MEDICAL CENTER, INC. D/B/A MEMORIAL
MEDICAL CENTER

C/W

DARLENE HUSBAND, CARROL DABNEY, SHALANDA A. BELL, SHARLEEN
McGLOTHURN, DOLORES THOMPSON, ANDREA BUFFERT, ANNIE PAUL and
ANTOINETTE RICHARDS

individually and on behalf of all others similarly situated

VERSUS

TENET HEALTHSYSTEMS MEMORIAL MEDICAL CENTER, INC. D/B/A MEMORIAL
MEDICAL CENTER

FILED: _____

DEPUTY CLERK

**JOINT MOTION FOR PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT AND
ISSUANCE OF OTHER RELATED ORDERS**

DALE W. ATKINS
CLERK, CIVIL DISTRICT COURT
422 CIVIL COURTS BUILDING
LOYOLA AVENUE - ROOM 402
NEW ORLEANS, LA 70112
504-572-9100

NOW INTO COURT, through undersigned counsel, come Plaintiffs and Defendants

Tenet HealthSystems Memorial Medical Center Inc. (Memorial) and Tenet HealthCare

BAL

Corporation (THC) (hereinafter collectively "Joint Movants"), who respectfully move the Court

to: (i) grant preliminary approval to the Settlement Agreement (the "Settlement Agreement") that

has been agreed to and is attached hereto as Exhibit A; (ii) set a date for a Fairness Hearing and

related deadlines for notices and objections; (iii) grant preliminary approval to the Notice of

Hearing on Final Partial Settlement and Notice of Hearing Date (the "Notice to Class Members")

(Attached as Exhibit "C"); (iv) approve the Joint Plan for Dissemination of Notice of Settlement

and Fairness Hearing, attached hereto as Exhibit "B", and (v) grant further and other relief

detailed in the body of this Joint Motion.

In support of this Joint Motion, the Joint Movants respectfully state as follows:

DATE: 7/20/11, 11:11 AM
CASE#: 2005 - 11709 SEC: 15
RECEIPT#: 288404
OTHER MOTION INFORMATION
\$ 47.00 \$ 47.00 \$ 0.00
TOTAL PAID CASE # 200511709: \$47.00
RECEIPT TOTAL: \$47.00
AMOUNT RECEIVED \$47.00
MADE PAYABLE BY
CIVIL DISTRICT COURT

1.

This Court has jurisdiction over the subject matter and the Plaintiffs and the Defendants pursuant to Louisiana Code of Civil Procedure Article 594.

2.

The Plaintiffs and the Defendants have agreed to a compromise and settlement in the above captioned and entitled Litigation. The terms, definitions, provisions and conditions of the compromise and settlement are more particularly set forth in the Final Settlement Agreement attached hereto as Exhibit "A".

3.

Except as otherwise expressly provided below or as the context requires, all capitalized terms used in this Joint Motion For Preliminary Approval of Settlement Agreement and Releases and Other Related Orders ("Joint Motion") shall have the meanings and/or definitions given them in the Final Settlement Agreement (Exhibit "A"). To the extent that there may be any conflict between the terms, definitions, provisions, reservations and conditions set forth in this Joint Motion and those set forth in the Final Settlement Agreement, the terms, definitions, provisions, reservations and conditions of the Final Settlement Agreement shall govern.

4.

The purpose and intent of the Final Settlement Agreement are (a) to settle and release all Claims asserted in the Litigation against the Defendants; (b) to terminate and extinguish all liability of the Defendants for all Released Claims; and (c) to dismiss the Litigation with prejudice as to the Defendants with each party to bear its own costs.

5.

Joint Movants represent to the Court that the Final Settlement Agreement has been reached through extensive and intensive negotiations and is the result of hundreds of hours of work and terminates this Litigation against the Defendants.

6.

The Defendants and the Plaintiffs have entered into the Final Settlement Agreement in order to put to rest all controversy in this matter and to avoid further expense and burdensome, protracted and costly litigation that would be required in defending and prosecuting the Litigation.

7.

The Joint Movants further represent to the Court that the Final Settlement Agreement, including the Consideration as reflected in the Settlement Agreement, is fair, adequate and reasonable, bears a probable and reasonable relationship to the exposure and risks of the Plaintiffs and the Defendants, and is within the range of possible judicial approval pursuant to Louisiana Code of Civil Procedure article 594, considering:

- a. The Defendants have denied, and continue to deny, any liability, wrongdoing or responsibility for the Incident and the consequences thereof, which is the basis of the Litigation, and the Claims asserted in the Litigation, and any other Claims related to the Incident and believe that the Claims are without merit and that such Claims are barred in whole or in part.
- b. The complexity, expense, uncertainties, delays, likely duration and exigencies of the Litigation with respect to the further participation of the Defendants and the extensive depositions, document production, and other discovery taken to date in the Litigation;
- c. The uncertainty of the issues affecting liability, including the nature and extent of damage to the Plaintiffs, fault and apportionment thereof, causation, injury and damages;
- d. The stage of the proceedings and the amount of discovery completed;
- e. The probability of the Plaintiffs' success on the merits as to the Defendants;
- f. The wide range of possible recovery from the Defendants for damages, if any;
- g. The assurance to be gained for the benefit of the Plaintiffs that a recovery will be obtained regardless of the outcome of further litigation;
- h. The financial resources of the Defendants, particularly with reference to ability to defend and/or satisfy the Claims being made in the Litigation;
- i. The reduction of expenses and risk attributable to avoidance of further proceedings, appellate and otherwise, against the Defendants;
- j. The prevailing consideration in all compromise settlements that each party, whether plaintiff or defendant, weighs the advantages of settlement against the risk of loss; and
- k. The concurrences of counsel for the Plaintiffs and counsel for the Defendants, as reflected by their respective signatures to this Joint Motion.

8.

Joint Movants further represent to the Court that the negotiations resulting in the Settlement Agreement were conducted by arms-length bargaining on all issues, including liability, extent of compromise, and nature and extent of claimed damages, free of any collusion or inequitable treatment of particular class members or discussion of attorneys' fees, and in accordance with each Moving Party's recognition of its relative risks and exposures and the

utility of settlement which Joint Movants believe to be in the best interests of its respective clients.

9.

The Plaintiffs expressly reserve any and all Claims against all persons and entities other than the Defendants and Released Parties identified in the Final Settlement Agreement (Exhibit "A").

10.

The Joint Movants request that the Court approve the Notice to Class Members, which is attached as an exhibit to the Settlement Agreement, in accordance with all of the terms, provisions and conditions of the Settlement Agreement and as ordered by the Court. The Joint Movants also request that the Court issue a Notice Plan.

11.

The Joint Movants request that the Court approve Whitney Bank Trust Dept. as the Escrow Agent. The Escrow Agent shall serve in that capacity under the Escrow Agreement, which is attached as an exhibit to the Settlement Agreement, in accordance with all of the terms, provisions and conditions of the Settlement Agreement and as ordered by the Court.

12.

The funds deposited in and ultimately on deposit in the escrow account shall be designated by the Court as a "qualified settlement fund" within the meaning of § 468B of the U.S. Internal Revenue Code (26 U.S.C. § 468B) and all regulations promulgated thereunder and are to be held and administered in accordance with the Escrow Agreement and subject to the provisions of the Final Settlement Agreement, under the general supervision of the CADA, the Special Master to be appointed by the Court, and the Escrow Agent and the continuing jurisdiction of the Court.

13.

Joint Movants request a hearing date for the Fairness Hearing at which the Court will consider comments and objections regarding this settlement as set forth in the Final Settlement Agreement, including its fairness, reasonableness and adequacy under article 594 of the Louisiana Code of Civil Procedure and at which the Court shall decide whether an Order and Judgment of dismissal shall be entered.

14.

Joint Movants request that the Court order that any Class Member's objections to or comment on the Settlement Agreement shall be made in writing, shall state the specific reason(s) for the objection, and shall be mailed to the Lead Counsel prior (date?) to the Fairness Hearing.

15.

Joint Movants request that Class Members who do not follow the procedure outlined above shall be deemed to have waived any objections and shall be forever foreclosed from making any objection to the fairness, reasonableness and adequacy of the settlement or the Order and Judgment that may be entered;

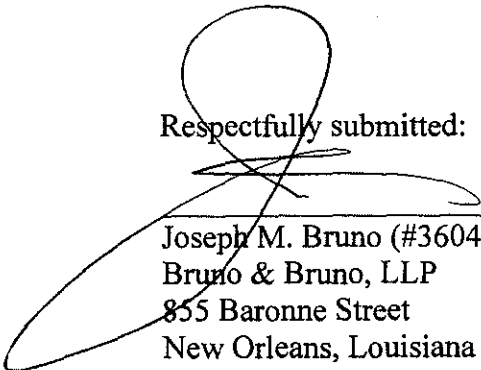
WHEREFORE, the Joint Movants respectfully request and jointly move that the Court grant the following relief, by entering the preliminary approval Order substantially in the form attached hereto as (Exhibit "C"):

- a. Preliminarily approve the Settlement Agreement (Exhibit "A") as being fair, reasonable and adequate, entered into in good faith, free of collusion to the detriment of the Class, and within the possible range of judicial approval pursuant to La. Code Civ. P. art. 594;
- b. Set a date for the Fairness Hearing for consideration of any objections to the Settlement Agreement and for the Court to determine the reasonableness and adequacy of the Settlement Agreement.
- c. Appoint a Special Master and authorize and direct the Special Master to prepare and submit to the Court for approval a protocol for schedules and procedures for (i) the implementation of the terms and conditions of the Agreements; (ii) the disposition of objections to be considered at the Fairness Hearing; and (iii) the maintenance of the Agreement at the Office of the Special Master for inspection by Class Members, during regular weekday business hours;
- d. Appoint a Court Appointed Distribution Agent (CADA) to handle disbursement of funds, payment of expenses, reporting and accounting of same to the Court and all counsel.
- e. Order that the Joint Plan for Dissemination of Notice of Settlement are approved;
- f. Order that any objection to the fairness, adequacy or reasonableness of the Agreement shall be made in writing, shall state the specific reason(s) for the objection, shall be postmarked no later than September 21, 2011 (date) and shall be sent to the Lead Counsel;
- g. Order that Class Members who do not follow the procedure outlined above shall be deemed to have waived any objections and shall be forever foreclosed from making any objection to the fairness, reasonableness and adequacy of the Agreement or any final Order and Judgment that may be entered;
- h. Consider at the Fairness Hearing properly filed and lodged comments and objections regarding the Agreement, including the Agreement's fairness, reasonableness and adequacy under article 594 of the Louisiana Code of Civil

Procedure and decide whether a final Order and Judgment of dismissal shall be entered, shall be conducted;

- i. Order that (i) the form and execution of the Escrow Agreement, attached as an exhibit to the Settlement Agreement and (ii) the appointment of Whitney Bank Trust Dept. of Louisiana as the Escrow Agent are each hereby approved;
- j. Order that (i) the funds on deposit in the Settlement Escrow Accounts be established as a qualified settlement fund pursuant to § 468B of the U.S. Internal Rev. Code (26 U.S.C. § 468B) and the regulations promulgated thereunder from the earliest date permitted by law; and (ii) the Court assume continuing jurisdiction over the Escrow Account in accordance with § 468B of the U.S. Internal Revenue Code of 1986 (26 U.S.C. § 468B); and (iii) the funds in each such account may be invested, disbursed, paid and/or transferred in accordance with the provisions of the Escrow Agreement and the Settlement Agreement;
- k. Order that the Court shall maintain continuing jurisdiction over these settlement proceedings with respect to settlement of the Litigation, including the allocation and distribution of all available settlement funds and hearing thereon; and
- l. Provide such other and further relief as may be just and equitable and in keeping with the purposes and intent of the Joint Movants as expressed above.

Respectfully submitted:



Joseph M. Bruno (#3604)
Bruno & Bruno, LLP
855 Baronne Street
New Orleans, Louisiana 70113
Telephone: (504) 535-1335
Facsimile: (504) 581-1493
Email: jbruno@brunolaw.com
Attorney for the PSC
AND

Roderick "Rico" Alvendia (#25554)
J. Bart Kelly, III
Jeanne Demarest
Alvendia, Kelly and Demarest
909 Poydras Street, Suite 1625
New Orleans, Louisiana 70112
Telephone: (504) 482-5811
Facsimile: (504) 200-0001
Email: rico@akdlalaw.com
Attorneys for the PSC

AND

Mark P. Glago (#25395)
Glago Law Firm, LLC
One Canal Place, Suite 1700
365 Canal Street
New Orleans, Louisiana 70130
Telephone: (504) 599-8666
Facsimile: (504) 599-8699
Email: Mglago@glagolawfirm.com
Attorney for the PSC

AND

Tammie E. Holley (#26659)
650 Poydras Street, Suite 1420
New Orleans, Louisiana 70130
Telephone: (504) 252-9292
Facsimile: (504) 324-0773
Email: Tammieholley@hotmail.com
Attorney for the PSC

AND

Anthony D. Irpino (#24727)
Irpino Law Firm
2216 Magazine Street
New Orleans, Louisiana 70130
Telephone: (504) 525-1500
Facsimile: (504) 525-1501
Email: airpino@irpinolaw.com
Attorney for the PSC

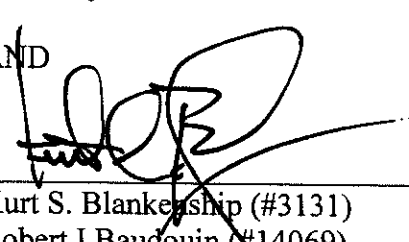
AND

Todd R. Slack (#24647)
Huber, Slack, Houghtaling, Pandit &
Thomas, LLP
1100 Poydras Street, Suite 1405
New Orleans, Louisiana 70163
Telephone: (504) 274-2500
Facsimile: (504) 910-0838
Email: todd@hshptlaw.com
Attorney for the PSC

AND

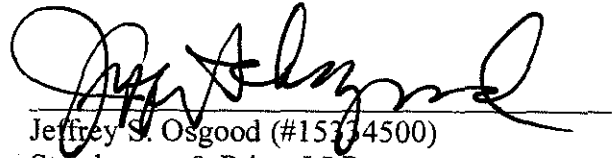
James M. Williams (#26141)
Gauthier, Houghtaling & Williams
3500 N. Hullen Street
Metairie, Louisiana 70002
Telephone: (504) 456-8600
Facsimile: (504) 456-8624
Attorney for the PSC

AND



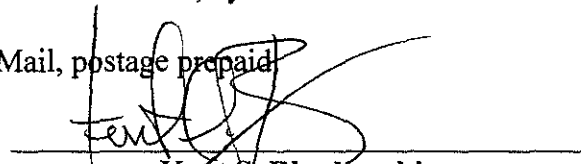
Kurt S. Blankenship (#3131)
Robert I Baudouin (#14069)
BLUE WILLIAMS, L.L.P.
3421 N. Causeway Boulevard, Suite 900
Metairie, Louisiana 70002
Telephone: (504) 831-4091
Facsimile: (504) 837-1182
Email: Kblankenship@bluewilliams.com
Attorneys for Tenet HealthSystems
Memorial Medical Center, Inc. d/b/a
Memorial Medical Center

AND


Jeffrey S. Osgood (#15334500)
Strasburger & Price, LLP
901 Main Street, Suite 400
Dallas, TX 75202
Telephone: (214) 651-4582
Facsimile: (214) 651-4330
Attorneys for Tenet Healthcare Corporation

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2011, a copy of the above and foregoing has been forwarded to all counsel of record herein, by either facsimile transmission, hand delivery, or placing same in the U.S. Mail, postage prepaid.


Kurt S. Blankenship

FILED

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS JUL 20 P 12:53

NO. 2006-10210

STATE OF LOUISIANA

c/w 2005-11709

ELMIRA PRESTON, ET AL.

VERSUS

TENET HEALTHSYSTEM MEMORIAL MEDICAL CENTER, INC. D/B/A
MEMORIAL MEDICAL CENTER

CIVIL
DIVISION "B"
DISTRICT COURT

FILED: _____

DEPUTY CLERK

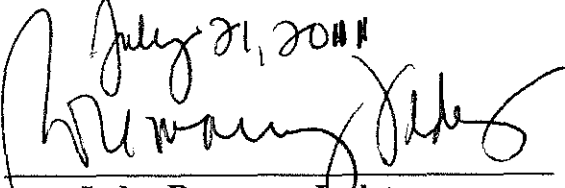
ORDER

CONSIDERING the "Joint Motion for Approval of Settlement Agreement and Releases and Issuance of Other Related Orders,"

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- a. The Joint Motion for Preliminary Approval of Settlement Agreement be and it is hereby granted, and the Court approves the Settlement Agreement (Exhibit "A") as being fair, reasonable and adequate, entered into in good faith, free of collusion to the detriment of the Class, and within the possible range of judicial approval pursuant to La. Code Civ. P. art. 594;
- b. A final Fairness Hearing on the Settlement Agreement and the proposed Settlement set forth therein to consider comments/objections regarding the Settlement Agreement and to consider fairness, reasonableness and adequacy under Art. 594 of the Louisiana Code of Civil Procedure, shall be conducted on the 31st day of October, 2011 at 9:30 clock a.m. in Division "B": of the Civil District Court for the Parish of Orleans.
- c. The Court appoints GILBERT V. ANDRY, IV as Special Master in this matter. The Court authorizes and directs said Special Master Appoint to prepare and submit to the Court for approval a protocol for schedules and procedures for (i) the implementation of the terms and conditions of the Agreements; (ii) the disposition of objections to be considered at the Fairness Hearing; and (iii) the maintenance of the Agreement at the Office of the Special Master for inspection by Class Members, during regular weekday business hours;
- d. The Court appoints BOURBONIS, BENNET, LLC as the Court Appointed Distribution Agent for the purpose of disbursing Settlement Funds, paying expenses and fees, and accounting for and reporting of same to the Court and all counsel.
- e. Joint Plan for Dissemination of Notice of Settlement and the Notice itself are approved;
- f. The Court orders that that any objection to the fairness, adequacy or reasonableness of the Agreement shall be made in writing, shall state the specific reason(s) for the objection, shall be postmarked no later than September 21, 2011 (date) and shall be sent to the Lead Counsel;
- g. The Court orders that Class Members who do not follow the procedure outlined above shall be deemed to have waived any objections and shall be forever foreclosed from making any objection to the fairness, reasonableness and adequacy of the Agreement or any final Order and Judgment that may be entered;

- h. The Court will consider at the Fairness Hearing properly filed and lodged comments and objections regarding the Agreement, including the Agreement's fairness, reasonableness and adequacy under article 594 of the Louisiana Code of Civil Procedure and decide whether a final Order and Judgment of dismissal shall be entered, shall be conducted;
- i. The Court orders that (i) the form and execution of the Escrow Agreement, attached as an exhibit to the Settlement Agreement and (ii) the appointment of Whitney Bank Trust Dept. of Louisiana as the Escrow Agent are each hereby approved;
- j. The Court orders that (i) the funds on deposit in the Settlement Escrow Accounts be established as a qualified settlement fund pursuant to § 468B of the U.S. Internal Rev. Code (26 U.S.C. § 468B) and the regulations promulgated thereunder from the earliest date permitted by law; and (ii) the Court assume continuing jurisdiction over the Escrow Account in accordance with § 468B of the U.S. Internal Revenue Code of 1986 (26 U.S.C. § 468B); and (iii) the funds in each such account may be invested, disbursed, paid and/or transferred in accordance with the provisions of the Escrow Agreement and the Settlement Agreement;
- k. The Court approves the Notice of Hearing on Proposed Final Settlement Agreement and the Short Form Notice;
- l. The Notice of Hearing on Proposed Final Settlement is to be sent by United States Mail, postage prepaid, on AUGUST 5, 2011 (date) to all Class Members whose names and addresses are known to the Plaintiff Steering Committee.
- m. A copy of the Notice of Hearing on Proposed Final Settlement shall also be mailed on the same date to each attorney believed to represent individual class members identified in paragraph (1), as well as to Counsel for the Defendants;
- n. A "Short Form Notice" shall be published in the *Times Picayune* in New Orleans, the *Advocate* in Baton Rouge, Lakes Charles' *American Press*, and Lafayette's *The Daily Advertiser*, on two occasions fifteen days apart, with the last date no later than AUGUST 20, 2011 (date);
- o. The "Short Form Notice" shall be published in a Friday edition of *USA Today*, no later than AUGUST 10, 2011 (same date as above).
- p. All such published notices shall occupy one-quarter page.
- q. The Court shall maintain continuing jurisdiction over these settlement proceedings with respect to settlement of the Litigation, including the allocation and distribution of all available settlement funds and hearing thereon.

July 21, 2011

Judge Rosemary Ledet

A TRUE COPY

DEPUTY CLERK, CIVIL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA